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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

October Term, 1941.

No. 247

HENDERSON SUPPLEE, JR., MRS. MARIE SUPPLEE DICKSON and MRS. ELIZABETH S. KIRK, Executor and Executrices of the Will of C. Henderson Supplee, Deceased, and MRS. C. HENDERSON SUPPLEE, Surviving Wife,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit and Brief in Support Thereof.

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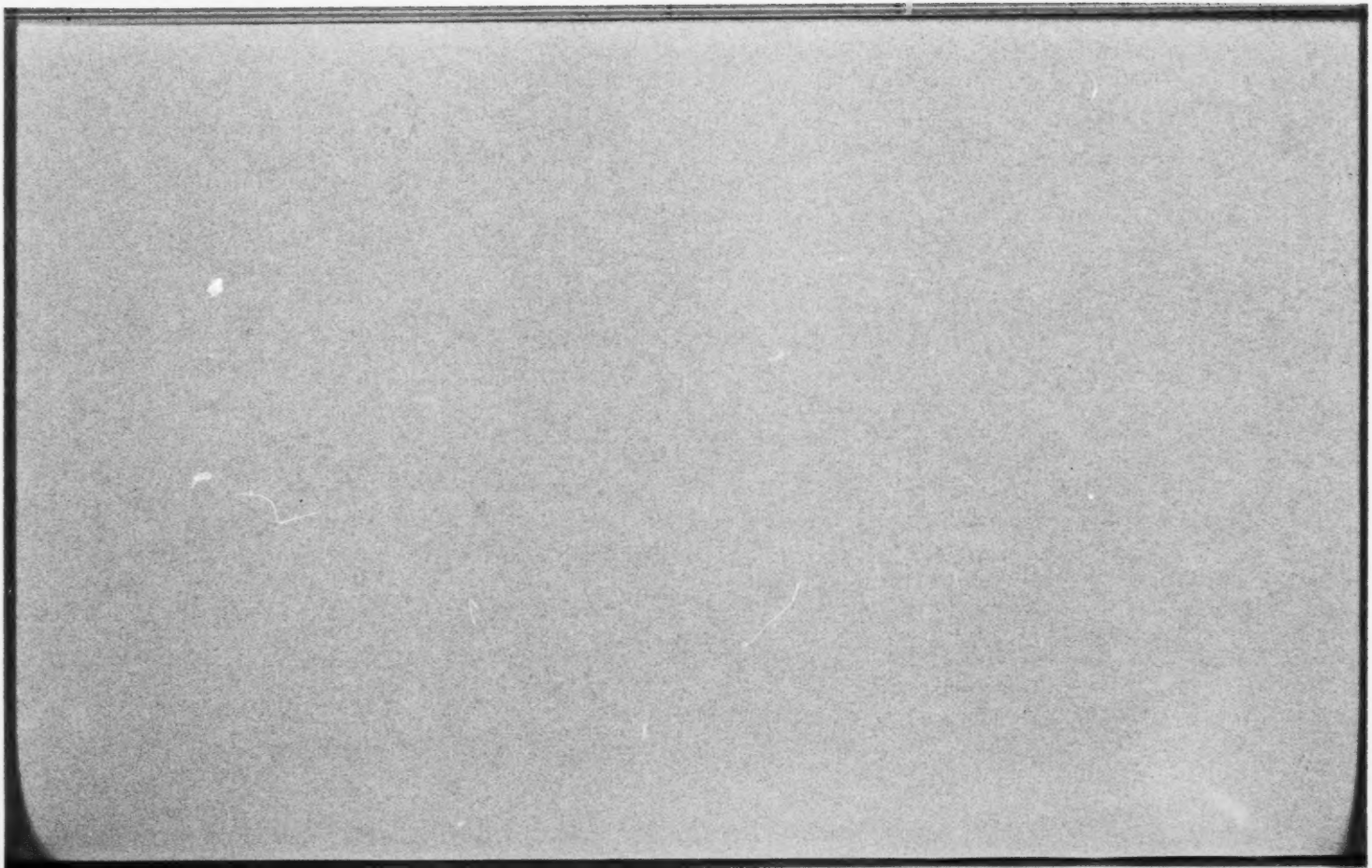

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No. . October Term, 1941.

HENDERSON SUPPLEE, JR., MRS. MARIE SUPPLEE DICKSON AND MRS. ELIZABETH S. KIRK, EXECUTOR AND EXECUTRICES OF THE WILL OF C. HENDERSON SUPPLEE, DECEASED, AND MRS. C. HENDERSON SUPPLEE, SURVIVING WIFE,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

To the Chief Justice of the United States and Associate Justices of the Supreme Court of the United States:

Henderson Supplee, Jr., Mrs. Marie Supplee Dickson and Mrs. Elizabeth S. Kirk, Executor and Executrices of the Will of C. Henderson Supplee, deceased, and Mrs. C. Henderson Supplee, Surviving Wife, the petitioners above named, respectfully pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Third Circuit affirming a decision of the Board of Tax Appeals. Judgment was rendered in the Circuit Court of Appeals April 8, 1941, their number 7422.

The appeal was from a final decision of the Board of Tax Appeals holding that there was a deficiency in income tax of C. Henderson Supplee, deceased, due for the year 1932 in the amount of $38,711.11.

Summary Statement of Matters Involved.

Petitioners are the executor, executrices and surviving wife of C. Henderson Supplee, deceased. The respondent, Commissioner of Internal Revenue, assessed a deficiency in income tax of the deceased for the year 1932 in the amount of $42,484.96, disallowing a deduction from gross income of $329,430 representing a loss sustained on an investment in stock of the Franklin Trust Company, also disallowing a deduction of $10,000 being a loss on a one-thirteenth interest in Franklin Trust Company stock which accompanied a Pennsylvania Company note, also disallowing a deduction of $120 in charitable gifts and in reducing a loss as an endorser on the note of the Pennsylvania Company from $30,066.66 to $22,374.25.

The petitioners thereupon appealed to the Board of Tax Appeals which allowed the deduction of $120 for charitable gifts and the deduction on the note of the Pennsylvania Company in the full amount of $30,066.66, and reduced the total deficiency to $38,711.11. The Board of Tax Appeals refused to allow the loss on the Franklin Trust Company stock, claiming the loss should have been taken in 1931, the year in which the bank closed. A great deal of testimony was taken at the hearings before the Board of Tax Appeals. The Circuit Court of Appeals affirmed the decision of the Board of Tax Appeals.

Question Presented.

This case presents the question whether the stock of a bank becomes worthless in the year in which the bank was taken over by the Secretary of Banking at the request of the bank's officers and a receiver appointed during which time efforts were being made to reopen the bank, or does the stock become worthless in the following year when the appraisers were appointed and they filed and published their report and all efforts to reopen the bank ceased.

To determine this question, it is necessary for the court to decide whether such is a mixed question of law and fact, and therefore one in which the appellate court has the right to substitute on appeal its judgment for that of the Board of Tax Appeals.

Reasons Relied Upon for the Allowance of the Writ.

(1) The United States Circuit Court of Appeals for the Third Circuit has decided an important question of law in conflict with the decision of the United States Court of Claims on the same question.

Lyon v. United States, 5 Fed. Supp. 138;
Bancroft v. United States, 33 Fed. Supp. 225.

(2) The United States Circuit Court of Appeals for the Third Circuit has decided an important question of law by affirming a decision of the Board of Tax Appeals which is in conflict with other decisions of the Board of Tax Appeals on the same question.

Wesley V. E. Terhune v. Commissioner, 40 B. T. A. 750;
John A. Watson, Jr. v. Commissioner, 38 B. T. A. 1026.

(3) The United States Circuit Court of Appeals for the Third Circuit has decided an important question of law in conflict with the decision of the District Court of Arkansas.

Sherill v. Adkins, 394 C. C. H. P. 9408.

Wherefore, it is respectfully prayed that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Third Circuit, commanding that court to certify and send to this court for its review and determination the full and complete transcript of the record and all proceedings in the case at bar, their number 7422, and that the judgment of said United States Circuit Court of Appeals for the Third Circuit may be reversed by this Honorable Court and that your petitioners may have such other and further relief in the premises as this Honorable Court may deem just and proper and your petitioners will ever pray.

HENDERSON SUPPLEE, JR., MRS. MARIE SUPPLEE DICKSON and MRS. ELIZABETH S. KIRK, Executor and Executrices of the Will of C. Henderson Supplee, Deceased, and MRS. C. HENDERSON SUPPLEE, Surviving Wife,

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